

## § 46.207

(f) If you do not take the inventory as of the close of business on the last respective business days of 1999 and 2001, the records must be reconciled as described in § 46.205(e).

### § 46.207 Cigarettes in transit.

Cigarettes in transit must be included in your inventory if you hold title to the cigarettes. If you have transferred the title, you must document the title transfer in writing. For example, you may mark the bill of lading with a written statement that indicates the time and place of the title transfer.

### § 46.208 Guidelines to determine title of cigarettes in transit.

You may use the following guidelines to establish who holds title to cigarettes in transit.

(a) If State law mandates the change in title, then no agreement or contract between seller and buyer can alter it.

(b) In the absence of State law governing the change of title between seller and buyer, the Uniform Commercial Code allows the seller and buyer to agree when title passes.

(c) If there is no State law or agreement between the seller and buyer, the Uniform Commercial Code states that title transfer depends on how the seller ships the cigarettes.

(1) *Freight on board (F.O.B.) destination.* The title transfer occurs when the seller completes the performance of the physical delivery of the cigarettes.

(2) *Freight on board (F.O.B.) shipping point.* The title transfer occurs when the seller transfers the title at the time and place of shipment, which is generally by common carrier.

### § 46.209 Cigarettes in a foreign trade zone.

You are liable for the tax and must take an inventory when either of the following conditions apply:

(a) Internal revenue taxes have been determined or Customs duties liquidated, with respect to cigarettes pursuant to the first proviso of section 3(a) of the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a), or

(b) Cigarettes are held by a Customs officer pursuant to the second proviso

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of section 3(a) of the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a).

### § 46.210 Cigarettes held in bond.

If you are a manufacturer or an export warehouse proprietor and hold cigarettes in TTB bond on the tax increase dates, the floor stocks tax does not apply to those cigarettes. Likewise, if you have cigarettes held in a Customs bonded warehouse, the floor stocks tax does not apply on those cigarettes.

### § 46.211 Unmerchutable cigarettes.

Any cigarettes that you hold for return to a supplier because of some defect are not subject to the floor stocks tax. You must prepare a separate list of these items. You cannot include as unmerchutable any items that may be held because of poor market demand or to reduce your inventory.

### § 46.212 Cigarettes in vending machines.

You do not have to inventory cigarettes held in a vending machine for retail sale, provided:

(a) The vending machine holding the cigarettes is placed at a location where retail sales occur, and

(b) The cigarettes are ready to be dispensed by a consumer.

### § 46.213 Cigarettes marked “not for sale” or “complimentary”.

Cigarettes marked “not for sale” or “complimentary” that are part of a sale (for example, buy two packs and get one pack free) are subject to the floor stocks tax and must be included in the book or record inventory as required by §§ 46.205 and 46.206. Cigarettes that are marked “not for sale” or “complimentary” and are intended to be given away and not in conjunction with any sale are not subject to the floor stocks tax.

## COMPUTE TAX LIABILITY

### § 46.221 Determine amount of tax due.

After you have taken your inventory, apply the applicable tax rate for each type of cigarette using the table in § 46.222. Multiply the amount of each type of cigarette by the applicable tax rate.